

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JORDAN ZITO,

Plaintiff,

vs.

THE STATE OF NEVADA ex rel
NEVADA COMMISSION ON JUDICIAL
DISCIPLINE,

Defendant.

Case No. 3:24-cv-00493-ART-CSD

ORDER ON REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE
(ECF NO. 4)

Plaintiff brings this lawsuit alleging various violations of Nevada law by the Nevada Department of Judicial Discipline. Magistrate Judge Denney issued a Report and Recommendation (“R&R”) screening Plaintiff’s complaint and recommending that his application to proceed in forma pauperis (“IFP application”) be granted and his claim be dismissed with prejudice for lack of jurisdiction and failure to state a claim. (ECF No. 4.) Plaintiff filed objections to Judge Denney’s R&R. (ECF No. 5.)

For the reasons set forth below, the Court adopts Judge Denney’s R&R as to dismissal for lack of jurisdiction. The Court dismisses this complaint and instructs the Clerk to close this case.

I. Review of Reports and Recommendations

Under the Federal Magistrates Act, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). A court is not required to conduct “any

1 review at all . . . of any issue that is not the subject of an objection.” Thomas v.
 2 Arn, 474 U.S. 140, 149 (1985). Because [Plaintiff] objects to Judge [MJ]’s R&R,
 3 the Court reviews the issues *de novo*.

4 **II. Screening Standard**

5 Under 28 U.S.C. § 1915, which applies to all actions filed in forma
 6 pauperis, “the court shall dismiss the case at any time if the court determines
 7 that-- (A) the allegation of poverty is untrue; or (B) the action or appeal-- (i) is
 8 frivolous or malicious; (ii) fails to state a claim upon which relief may be granted;
 9 or (iii) seeks monetary relief against a defendant who is immune from such relief.”
 10 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

11 **III. Analysis**

12 Judge Denney’s R&R recommends dismissal first on the ground that the
 13 Court lacks jurisdiction over Plaintiff’s claims. “The Eleventh Amendment
 14 prohibits federal courts from hearing suits brought against an unconsenting
 15 state.” *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th
 16 Cir. 1991). This has been interpreted to mean that state agencies are immune
 17 from private suits seeking damages or injunctive relief in federal court. *Savage v.*
 18 *Glendale Union High School.*, 343 F.3d 1036, 1040 (9th Cir. 2003). The Eleventh
 19 Amendment bars suits against state agencies, as well as those where the state
 20 itself is named as a defendant. *See P.R. Aqueduct & Sewer Auth. v. Metcalf &*
 21 *Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Munoz v. Superior Ct. of L.A. Cnty.*, 91 F.4th
 22 977, 980 (9th Cir. 2024).

23 Here, Plaintiff brings this action against the Nevada Commission on
 24 Judicial Discipline. “The Commission has been recognized as an agency and/or
 25 department of the State of Nevada on numerous occasions.” *Halverson v. Nevada*
 26 *Comm’n on Jud. Disc.*, No. 2:08-CV-01006-RCJ-LRL, 2009 WL 10708909, at *3
 27 (D. Nev. Mar. 26, 2009) (citing *Salman v. State of Nev. Comm’n on Judicial*
 28 *Discipline*, 104 F. Supp. 2d 1262, 1267 (D. Nev. 2000)). Therefore, the

1 Commission has immunity under the Eleventh Amendment, and a federal court
2 cannot hear claims for damages or injunctive relief against it. *See id.*

3 Additionally, to the extent that Plaintiff's complaint seems to seek relief via
4 an injunction or writ commanding the Nevada Commission on Judicial Discipline
5 to take certain actions pursuant to Nevada state law, this Court cannot do so.
6 The Eleventh Amendment bars suits in federal court against states on the basis
7 of violations of state law. *See Pennhurst State Sch. & Hosp. v. Halderman*,
8 465 U.S. 89, 124–25 (1984); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973–
9 74 (9th Cir. 2004).

10 **IV. Leave to Amend**

11 Judge Denney's R&R recommended that Plaintiff's complaint be dismissed
12 with prejudice for lack of jurisdiction and failure to state a claim.

13 A district court abuses its discretion by denying leave to amend unless
14 amendment would be futile or the plaintiff has failed to cure the complaint's
15 deficiencies despite repeated opportunities. *AE ex rel. Hernandez v. Cnty. of*
16 *Tulare*, 666 F.3d 631, 636 (9th Cir. 2012) (citing *Telesaurus VPC, LLC v. Power*,
17 623 F.3d 998, 1003 (9th Cir.2010)). Because the Court lacks jurisdiction over
18 Plaintiff's claims, amendment would be futile. *See Steinmeyer v. Laboratory Corp.*
19 *of Am. Holdings*, 676 F. Supp. 3d 851, 865 (S.D. Cal. 2023).

20 Because the Court does not reach the issue of whether Plaintiff has stated
21 a claim, the Court will dismiss Plaintiff's complaint without prejudice but without
22 leave to amend.

23 **V. Conclusion**

24 It is therefore ordered that Judge Denney's R&R (ECF No. 4) is ADOPTED
25 in part in accordance with this order.


26 It is further ordered that Plaintiff's complaint (ECF No. 1-1) be FILED.

27 It is further ordered that this action is DISMISSED without prejudice but
28 without leave to amend.

1 It is further ordered that Plaintiff's IFP applications (ECF Nos. 1, 3) are
2 DENIED as moot.

3 It is further ordered that the Clerk of the Court is instructed to CLOSE this
4 case.

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6 Dated this 20th day of February, 2025.

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9 ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE